Supreme Court, U.S.
FILED

(2) No. 941638 APR 6 - 1995

OFFICE OF THE CLERK

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1994

JESSIE SHIOW-JIUAN HO

Petitioner

vs.

THE STATE BAR OF CALIFORNIA

Respondent

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

JESSIE SHIOW-JIUN HO
111 North Market Street, Suite 707
San Jose, Ca. 95113

1-408-279-1093

Petitioner Attorney *Pro Se*

66 pp

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S044354

SBC 93-0-14171

IN THE SUPREME COURT OF CALIFORNIA

F I L E D
SUPREME COURT
FILED
MAR I 6 1995
Robert Wandruff Clerk
P. QUINN, DEPUTY

IN RE JESSIE SHIOW-JIUAN HO ON DISCIPLINE

Petition for writ of review, application for stay, and motion for recusal are denied.

It is ordered that Jessie Shiow-Jiuan Ho be suspended from the practice of law for one year, that execution of suspension be stayed, and that she be placed on probation for two years on condition that she be actually suspended for 45 days. She is also ordered to comply with the other conditions of probation recommended by the Hearing Department of the State Bar Court in its Order Regarding Stipulation filed November 21, 1994. It Is further ordered that she take and pass the California

Professional Responsibility Examination within one year after the effective date of this order. (See Segretti v. State Bar (1976) 15 Cal.3d 878, 891, fn. 8.) Costs are awarded to the State Bar and shall be added to and become part of the membership fee for the next calendar year. (Business and Professions Code section 6140.7.)

(unreadable)

_____

Acting Chief Justice

State Statutes

THE STATE BAR ACT

California Business and Professions Code

Sec. 6001. STATE BAR; PERPETUAL SUCCESSION; SEAL; REVENUE; POWERS; LAWS APPLICABLE

The State Bar of California is a public corporation. It is hereinafter designated as the State Bar.. . .No law of this state restricting, or prescribing a mode of procedure for the exercise of powers of state public bodies or state agencies, or classes thereof, including, but not by way of limitation, the provisions contained in Division 3 (commencing with section 11000), Division 4 (commencing with section 16100), and Part 1(commencing with section 18000) and Part 2 (commencing with section 18500) of Division 5, of Title 2 of the Government Code, shall be applicable to the State Bar, unless the legislature expressly so declares. (Origin: State Bar Act, sec. 2. added by Stats. 1939, ch 34. Amended by Stats. 1957, ch. 1526; Stats. 978, ch. 380; Stats. 1988, ch. 1149.)

Sec. 6079.1 STATE BAR COURT HEARING JUDGES

(a) The Supreme Court shall appoint a presiding judge of the State Bar Court and no fewer than seven hearing judges, and any additional hearing judges as may be authorized by the Legislature, to efficiently decide any and all regulatory matters pending before the Hearing Department of the State Bar Court. . .

(c) The board shall screen and rate all applicants for appointment or reappointment as a State Bar Court judge, and submit its nominations to the Supreme Court, unless otherwise directed by the Supreme Court. . .

(d) For judges appointed pursuant to this section or Section 6086.65, the board shall fix and pay reasonable compensation and

expenses and provide adequate supporting staff and facilities.

Sec. 6079.5 CHIEF TRIAL COUNSEL; APPOINTMENT; TERM; QUALIFICATIONS

(a) The board shall appoint a lawyer admitted to practice in California to serve as chief trial counsel. . .

Sec. 6086.5 STATE BAR COURT; ESTABLISHMENT; POWERS; RULES

The board of governors shall establish a State Bar Court, to act in its place and stead in the determination of disciplinary and reinstatement proceedings and proceedings pursuant to subdivisions (b) and (c) of section 6007 to the extent provided by rules adopted by the board of governors pursuant to this chapter.

. .

Sec. 6086.10 PAYMENT OF COSTS OF DISCIPLINARY PROCEEDINGS

(a) Any order imposing a public reproval on a member of the State Bar shall include a direction that the member shall pay costs. In any order imposing discipline, or accepting a resignation with a disciplinary matter pending, the Supreme Court shall include a direction that the member shall pay costs.

(b) The costs required to be imposed pursuant to this section include all of the following:

(1) The actual expense incurred by the State bar for the original and copies of any reporter's transcript of the State Bar proceedings, and any fee paid for the services of the reporter.

(2) All expenses paid by the State Bar which would qualify as taxable costs recoverable in civil proceedings.

(3) The charges determined by the State Bar to be "reasonable costs" of investigation, hearing, and review. These

amounts shall serve to defray the costs, other than fees for the services of attorneys or experts, of the State bar in the preparation or hearing of disciplinary proceedings, and costs incurred in the administrative processing of the disciplinary proceedings and in the administration of the client security fund.

. . .

(d) In the event an attorney is exonerated of all charges following a formal hearing, he or she is entitled to reimbursement from the State bar in the amount determined by the State bar to be the reasonable expenses, other than fees for attorneys or experts , of preparation for the hearing. (Added by Stats. 1986, ch. 662.)

Section 6140.7 DISCIPLINARY COSTS ADDED to MEMBERSHIP FEE

Costs assessed against a publicly reproved or suspended member shall be added to and become a part of the membership fee of the member, for the next calendar year. Costs unpaid by a member who resigns with disciplinary charges pending or by a member who is suspended of disbarred shall be paid as a condition of reinstatement of membership.

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CALIFORNIA SUPREME COURT
FILED
FEB. 27, 1995
ROBERT WANDRUFF
CLERK DEPUTY

THE SUPREME COURT OF THE STATE OF CALIFORNIA

In the Matter of	Docket No. S44354 State Bar Court Case No. 93-0-14171
JESSIE SHIOW-JIUAN HO No. 142844 A Member of the State Bar	**Motion for Recusal of Members of California Supreme Court**

Now comes the Petitioner, Jessie Shiow-Jiuan Ho, and respectfully moves for this Court, and its members, to recuse itself from hearing and determining whether it should sign a proposed stipulated order recommended by this Court's appointee to a party when the other party, the Petitioner, has withdrawn her

consent thereto prior to this Court's approval , due to undisclosed conflicts of interest within this Court, the prosecutor, its judges, and its State Bar Court.

Petitioner requests this Court forbear affixing its signature to such proposed stipulated order and issue a ruling first on this motion for recusal, so as to provide the Petitioner with a minimum thereafter of two weeks to request, if this Court declines to recuse itself or assign a Court of Appeals, a federal court hear and determine whether this Court's affixing its signature to such a proposed stipulation as an order offends the principles of due process of law concerning a fair and impartial adjudicator.

This motion is based on this Motion, the attached Points and Authorities, the files, and the records, and judicial notice of the State Bar Court statutes and Rules of Court.

RESPECTFULLY SUBMITTED

Dated: February 24, 1995

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THE SUPREME COURT OF THE STATE OF CALIFORNIA

In the Matter of	Docket No. S44354 State Bar Court Case No. 93-0-14171
JESSIE SHIOW-JIUAN HO No. 142844 A Member of the State Bar	**Points and Authorities in Support of Motion for Recusal of Members of California Supreme Court**

I.

Facts

The issue presented is whether this Court, or its members, should or may affix its signature to a proposed order

recommended by its appointee to the prosecuting party, based on a stipulation to which consent was withdrawn upon discovery by the Petitioner of a number of conflicts of interest of this Court, its appointees, the prosecutor, and the State Bar Court created by this Court with the prosecuting party.

References to "section(s)" refers to sections of the California Business and Professions Code. References to the "State Bar" refers to the State Bar of California. Petitioner incorporates by reference, as if set forth herein in full, the grounds of recusal which are set forth in her Petition appearing at pages 1-5.

II. The Risk of Bias is Intolerably High when a Court is a Partisan for a Party

When the risk of unfairness is intolerably high, a judge must be recused from a case. **Withrow v. Larkin** 421 U.S. at 58, 95 S. Ct. at 1470. While a judge is obligated to be unswayed by partisan interests, when he occupies a role as a partisan for a party and/ or on the issues presented by a party, he is disqualified to sit on a case as the risk of bias is intolerably high. California and American Bar Association Judicial Codes of Conduct, Canon

3(A)(1), Canons 3C(1)(a), (1)(c), 3C(3)(c). A judge who is an active participant in the affairs of a party possesses a"financial interest," as defined by the California and American Bar Association Judicial Codes of Conduct, Canon 3 C(3)(c) while Canon 3C(1)(c) requires a judge to disqualify himself when "he has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding."

A. Active Participation in the Affairs of the Prosecuting Party disqualifies the California Supreme Court and its members

Pursuant to **Ward v. Village of Monroeville** 409 U.S. 57, 93 S. Ct. 80, 34 L. Ed. 2d. 267 (1972), "the court dealt with the issue of whether trial before a mayor who also had executive responsibilities for the village budget and finances was consistent with the guarantees of the due process clause when the revenue produced from the mayor's court provided a substantial portion of village funds. The court once noted that in **Tumey [v. Ohio** 273 U.S. at 532, 47 S. Ct. at 444] the fact that the mayor.... shared directly in the fees and costs did not define the limits of

the principle." 409 U.S.. at 60, 93 S. Ct. at 83. Rather the court reiterated, 'the test is whether the mayor's situation is one which 'would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clean, and true between the State and the accused....Id, quoting **Tumey v. Ohio, supra,** 273 U.S. at 532, 47 S. Ct. at 444. The court held that such 'possible temptation might exist, even in the absence of a direct, personal pecuniary interest on the part of the adjudicator, when his 'executive responsibilities for village finances may make him partisan to maintain the high level of contribution from the mayor's court.' 409 U.S. at 60, 93 S. Ct. at 83, as presented in **Matter of Ross,** 656 P. 2d. 832, 99 Nev.1 (Nev. 1983).

An executive role concerning maintaining monies coming in from guilty adjudications does not define the principle, as the Codes of Judicial Conduct recognize. Active participation in the affairs of a party is a financial interest in a party. California and American Bar Association Judicial Codes of Conduct, Canon

3(A)(1), Canons 3C(1)(a), (1)(c), 3C(3)(c). This makes sense. A judge who actively participates in a party's affairs, in making a judgement for it, will be saving it monies or awarding it monies. In this Court's case, it awards the State Bar party monies by awarding costs to the State Bar, which are, in fact, the salaries and benefits of its appointees to the State Bar party and those of their co-employees, plus ordering probation terms which obligates the other party to pay for other programs administered by the party to which this Court has appointed employees, some of which this Court's appointees directly participate in, such as the Client Security Fund of the State Bar of California. Sections 6079.1, 6086.65, 6140.5, 6086.10(a)(b)(c).

As the Codes of Conduct emphasize, "financial interest" in a party is not limited to a judge putting money in his own pocket. It includes giving, granting, awarding judgments to a party with whom the judge actively participates, since it is assumed that every judgment carries with it a financial saving, cost, or aspect to the party in whose favor a judgment is awarded. That is not an incorrect assumption, since this Court's

orders denying all petitions of all accuseds always order monies paid to the State Bar party which include recoupment of the salaries and benefits of this Court's appointees to their privately financed State Bar employer. 3,091 attorneys have been summarily disbarred and suspended by this Court since January 1, 1989 with all orders ordering them to pay this Court's appointees' salaries and benefits as claimed "Costs," without disclosure this Court's award of "Costs" is not "costs," but the salaries and benefits of this Court's appointees to a party and their co-employees.

The United States Supreme Court in **Liljeberg v. Health Services Acquisition Corp.** 486 U.S. 847, 108 S. Ct. 2194, 100 L. Ed. 2d. 855(1988) held that a judge who was on the Board of a College, even though the College was not a party to the action, when the College was a financial beneficiary of the judgement, was disqualified under the objective reasonable person test of recusal which applies to the disqualification of both state and federal judges. See **Aetna Life Insurance Co. v. La Voie** 475 U.S. 813, 89 L.Ed. 823, 106 S. Ct. 1580 (1986). Thus, even if

a financial beneficiary of a judgment is not a party, a judge is disqualified when he has an extrajudicial relationship with a financial beneficiary of its orders. The Judicial Codes have held that an active participant in the affairs of a party is similar to a Board member or director in requiring a judge's disqualification for direct involvement with a party. California and American Bar Association Judicial Codes of Conduct, Canon 3(A)(1), Canons 3C(1)(a), (1)(c), 3C(3)(c). **Liljeberg, supra**, makes clear that the involvement may be with a financial beneficiary of an order and is not limited to direct involvement with the parties. This Court's active involvement with the State Bar prosecuting party includes it appointing employees to it; appointing ten employees to it who require a minimum of one million dollars a year in base salaries; selecting, interviewing and choosing its appointees from a list exclusively provided by the prosecuting party; appointing employees to a prosecuting party to sit as "Judges;" appointing employees to a prosecuting party to sit as Judges to a private attorney disciplinary Court the prosecuting party runs; overseeing the competence and ethics of its appointees to the

prosecuting party; removing, reappointing, and selecting additional employees to the prosecuting party to sit as judges to its State Bar Court. Sections 6079.1, 6079.5, 6086.65, Ca. Rules of Court, Rule 961. This is a substantial record of active involvement in the prosecuting party's affairs by the members of this Court for over five years.

By using the adjudicative role the members of this Court occupy to find guilt of professional misconduct of the State's attorneys, this Court aggrandizes and assists in the financing of the salaries, benefits, programs, staff, offices, housing, and perks of this Court's appointees and their co-employees by imposing the salaries and benefits of its appointees and their co-employees against each adjudged guilty attorney as claimed "costs," and in ordering attorneys to pay for and participate in other programs run by the employer of its appointees as probationary terms in order for the attorney to retain his license to practice law. Sections 6086.10(b), 6140.5. The adjudicative role enhances and aggrandizes the executive role the members of this Court occupy for a private prosecuting party. The financial beneficiary of its

disbarment and suspension orders is the party with whom the members of this Court have an active involvement in a non-judicial role, similar to the situation prohibited in **Liljeberg, supra.**

Aetna, supra, makes clear that the state standard of recusal used by this Court and cited in **Lebbos v. State Bar of California** 53 Cal.3d. 37, 278 Cal. Rptr. 845, 806 P.2d. 317 (1991), footnote 1, as a rationale for its sitting on over 4,000 cases involving the State Bar, while it has appointed employees to it since 1989, has been overruled by a requirement that the California Supreme Court comply with an objective standard of recusal and not continue to use a subjective standard which permits each justice to determine his or her own bias . In **Aetna, supra,** the United States Supreme Court made clear that a direct, personal, substantial pecuniary interest in a State Supreme Court Justice is not required for a State Supreme Court Justice to be required to recuse himself. As stated in **Aetna, supra,** at 822, "No judge `can be a judge in his own case [or be] permitted to try cases where he has an interest in the outcome." **In re:**

Murchison 349 U.S. 133, 136 (1955).....what degree or kind of interest is sufficient to disqualify a judge from sitting 'cannot be defined with precision.' *Ibid.* None-the-less, a reasonable formulation of the issue is whether the `situation is one `which would offer a possible temptation to the average. judge to ... lead him not to hold the balance nice, clear and true.' **Ward v. Village of Monroeville**, supra, at 60. " "...Justice must satisfy the appearance of Justice." **Aetna, supra,** p. 825, quoting **In re: Murchison** 349 U.S. at 136.

The United States Supreme Court has stated that the process is to"examine what factors might constitute an interest in the outcome of this case that would bear on recusal. " **Aetna, supra,** p. 822. On information and belief, members of this Court in 1988 met with officials and employees of the prosecuting party, the State Bar of California, without disclosure to any accuseds. On information and belief, members of this Court from 1988 through to the present have met with and had conversations with officials and employees of the prosecuting party, the State Bar of California, to which no accused has been

privy and to which this Court has made no disclosure to any accused. Those meetings and conversations concerned a commitment by the members of this Court to aid and assist the State Bar prosecuting party in controlling and taking over attorney discipline from this Court so as to permit this Court to control its workload. No accused was ever apprised of any of these con[illegible]ions, commitments, or *ex parte* collaborations by and between the members of this Court and a party. In 1988 and 1989, the members of this Court had *ex parte* communications with the State Bar party which it never disclosed to any accused. Those communications concerned requests from the prosecuting party for this Court to appoint employees to it to be "judges" to its State Bar Court to replace this Court issuing disbarment or suspension orders on the state's attorneys. This Court, as recent publicity indicates, continues to have *ex parte* communications and conversations and meetings with the prosecuting party without any disclosure or notice to any accused. On information and belief, for over six years this Court has had *ex parte* communications with the prosecuting party concerning the merits

of the constitutional issues presented by accuseds concerning the recusal of this Court and of the State Bar and its "judges" appointed by this court and concerning the unconstitutionality of the State Bar Court attorney licensing system.

As the federal court records indicate, which this Court has not disclosed to this Petitioner or any other accused, this court is a personal co-defendant with the prosecuting party in six federal lawsuits now pending concerning its removal from State Bar cases, which suits request personal monetary damages against the members of this Court for its claimed conspiracy with the State Bar private prosecuting party to disbar and suspend attorneys so as to financially benefit the employer of this Court's private appointees. Said suits plead, which is unrefuted in the court records, that this Court has a prior involvement with the prosecuting party, has *ex parte* communications with that party, has an extrajudicial involvement with the prosecuting party in reviewing its nominees to be "Judges" to its State Bar Court and in interviewing, selecting, approving, swearing in appointees to the prosecuting party in 1989 and 1993 as well as overseeing

them from 1989 through 1995, that this Court's appointees require over one million dollars a year for their private salaries as employees of the prosecuting party, and this Court has awarded its appointees' employer over fourteen million dollars in monies without disclosure to any of over 3,091 accuseds that the taking of the 3,091 attorneys' licenses would benefit the prosecuting party employer of this Court's appointees by over fourteen million dollars from the takings of accuseds' licenses to practice law. Hirsh v. Justices et. al, docket no. 94 55240, Server v. Justices et. al, docket no. 94 55250, Perry v. Justices et. al., docket no. 94 55507, Espinoza v. Justices et. al, docket no. 94 56335, Gupton v. Justices of the California Supreme Court, Eastern District Federal Court, Case no. 94-1495 GEB JM, and Grunwald v. Justices of the United States Supreme Court, United States Supreme Court, filed February 14, 1994, docket no. pending.

Since this Court superseded the state statute permitting access to accuseds to the State Court of Appeals concerning cases concerning the State Bar party in 1990 by passing rules of court, which were recommended *ex parte* by the prosecuting to

this Court and which were prohibited public comment, which rules prohibit access to any other court and reserve access to this Court alone, when it appointed employees to the State Bar prosecuting party in 1989, and, this permits this Court to review its appointees' recommendations against each accused and awards its appointees' monies from the takings of each accused's license to practice law, this act alone appears to confirm that a private conspiracy with the prosecuting party to disbar and suspend the State's attorneys to obtain monies for the employer of its appointees is a plausible explanation for the decisions of this Court for five years taking all accused's licenses to practice law. These facts raise a sufficient doubt in the mind of the average person on the street as to whether this Court could be impartial concerning an accused's case to compel this Court's recusal for cause. Section 6082, California Rules of Court, Rules 950-962.

That this court changed, at the *ex parte* request of the State Bar and without allowing public comment, from *de novo* review of recommendations of the State Bar to no review permitted to an accused in this Court's discretion, which

discretion it has exercised against over 3,091 accused attorneys since it appointed employees to the State Bar in 1989, is an additional indicia to the average person on the street that this Court is a biased adjudicator for the prosecuting party. Ca. Rules of Court, Rules 952, 954.

Appointing employees to a prosecuting party to be its Judges from a list exclusively provided by a prosecuting party is an additional indicia of bias for the prosecuting party which is unmistakable and which act was declared unconstitutional in a similar fact situation in **Wall v. American Optometric Association** 379 F. Supp. 175, affirmed 95 S. Ct. 166 (N.D. Ga. 1974), in which the United States Supreme Court denied certiorari.

Dealing with the specifics of the Petitioner's case, the State Bar in its reply has admitted it did not disclose the relevant facts about its financial interest, its State Bar Court, its judges, its money demands, its biased examinations, tests, and school, and the role of this Court for it and in providing it money from the Petitioner for this Court's appointees by this Court taking

licenses. Response brief, hereinafter referred to as RB. These admissions of non-disclosure are sufficient. The State Bar admits an accused may never file to set aside a stipulation within fifteen days as provided in its rules, as the State Bar never discloses until after the fifteen days to set aside has expired that the State Bar is demanding the attorney pay its prosecutors, investigators, and co-employee judges' salaries and benefits as claimed "costs," when there are no costs. The accused is never advised the judge is the private co-employee of the prosecutor and wants her salary paid too by the attorney. RB: 15:16. This admitted non-disclosure of the relevant facts concerning the financial interest of the prosecutor in recouping his salary and benefits of $309.00 and the salary and benefits of his co-employee investigator of $387.00 and of his undisclosed co-employee "judge" of $473.00, or a total of $1,517.00 for the salaries and benefits of the State Bar's employees is never disclosed before, with, or at the time the prosecutor influences and induces through omission of the relevant facts an accused to enter into a stipulation before charges are filed. P Exhibits B-5- B-7.

Heavy pressure, threats, and intimidations are applied to a naive young lawyer who is the victim of the professional fraud rings spawned by the State Bar's indifference to doing anything about them who prey on the new admittees and who successfully prey on them, because the State Bar has no interest in educating attorneys about these fraud rings as a prophylactic measure, since it makes money by finding guilt of the victimized attorneys instead and has a financial interest in making sure the fraud rings continue and prosper. That a state bar prosecutor defrauds with misrepresentations about his, his employer, and co-employees' financial and other interests and roles in a proceeding puts him in the same category as the fraud ring which already victimized the Petitioner and cost her thousands of dollars of her own money to voluntarily reimburse all persons harmed thereby.

The Petitioner, having been victimized once by a fraud ring has since educated herself, at her own expense, when her law school education and bar examination should have taught her, exactly how professional con artists operate. And the State Bar acts just like the professional con artist rings. It uses the "Hook,

Line, and Sinker" routine. The State Bar prosecutor hooks his victim by promising that the punishment shall be inconsequential if the attorney stipulates to some guilt. There shall be no publicity. There are no costs because the formal proceedings have not yet commenced and no formal charges have been filed. If the attorney does not stipulate, the attorney shall be subject to severe discipline for allowing herself to become the victim of a fraud ring, even when the attorney took all reasonable steps to prevent the harm, tried to get the records, close out the accounts, and ceased all involvement as soon as the attorney became aware that something was not right with the financing principles, and when the attorney has voluntarily paid out of her own funds all monies to clients and lien holders possibly harmed. The prosecutor says this is the easy way out. You committed gross professional misconduct (victims are not wrongdoers; they are the victims). After the "hook" is in the State Bar's victim, the State Bar runs out the line. Well, sign here and it will all be over. You have no more worries if you sign. There is no court appearance; don't worry about it. Put this behind you and

nothing else will happen. Then the "sinker." After the desired signature is obtained, the prosecutor gets his co-employee judge's signature, when he did not disclose the judge is his co-employee.

When the attorney starts to comply with the terms, she finds out there is a lot of money required to be paid to the State Bar which was not disclosed in the stipulation. Something is wrong here. She writes the judge to withhold acting on her signature. The judge ignores it. Then the attorney gets a copy of a transmittal to the State Supreme Court with a recommended order prepared by the State Bar for it to sign with "costs" awarded to the State Bar. But there is no State Bar order approving stipulation attached. Where is the order? But attached is the "sinker"- the State Bar wants its salaries and benefits paid for its prosecutor ($309.00), for the prosecutor's co-employee, the investigator ($387.00), and for its "judge" ($473.00) as claimed "Costs," when it has no costs. It wants a total of $1,517.70 for a transaction which consumed a minimum amount of time, and no more than two minutes of the judge's time, who *ex parte* signed the stipulation without a court appearance or

disclosure of her relationship with the prosecutor, the investigator, and their mutual desire to have their salaries and benefits paid by the Petitioner. Since no charges were yet filed, there was no time spent by the State Bar's "Court" on this matter as it never had anything before it to act upon. $473.00 as the salary of the judge for two minutes to sign a paper means that her housing, parking space, gold-plated chandeliers, oriental rugs, retirement plan, medical plan, perks, benefits, law clerks, research assistants, robes, books, seminars, vacations are all being charged against the Petitioner without disclosure, as the $473.00 equates to an hourly judge rate of $14,190 an hour. With "costs" now meaning $14,190 an hour for the State Bar's judge to its claimed Court, with an additional $309.00 minimum an hour for her co-employee prosecutor, and an additional minimum of $387.00 an hour for their mutual co-employee investigator who misinvestigated to find guilt to aggrandize his employer's purse at the Petitioner's expense, the clear undisclosed intent of the stipulation is clear.

The undisclosed goal of the stipulation is to bankrupt the

Petitioner by constantly extorting more and more monies from the Petitioner for the State Bar employees' salaries, benefits, and programs and set up the Petitioner with impossible terms, more and more proceedings, revocations, new terms, and each time ordering the Petitioner to pay the prosecuting party's judge $14,190 an hour until, as the Petitioner has learned occurs with stipulated State Bar dispositions, to prevent bankruptcy and insanity from the State Bar's harassment and money demands, the Petitioner is forced to resign or let herself be disbarred. This appears to be a professional scam the State Bar is operating so as to churn the admissions and discipline of the state's attorneys so as to financially benefit itself. This has the indicia of a "Hook, Line, and Sinker" professional con artist routine.

Since the State Bar on January 1, 1995 abolished the right of an attorney to contest the money demands for its employees' salaries as its claimed "Costs," but such a *pro forma* remedy was in existence as the consideration for the stipulation in 1994, the consideration for the stipulation has been unilaterally revoked by the State Bar party. This compels non-approval of its proposed

stipulated order for lack of consideration.[1]

Since this Court would be awarding $1,517.00 for the employer of its appointees, of which $473.00 is recoupment of the salary and benefits of its appointee to the prosecuting party for her salary and benefits in taking two minutes to put her name on a piece of paper, this Court, by sitting on this case, would be benefiting its own appointee to a party, just as it would be doing so if the monies went to the private employer of the wives or husbands of the members of this Court if it entered such an order without disclosure and waiver of its interest in the outcome.

III. The Risk of Bias is Intolerably High when a Court is a Partisan on the Issues

While a State Supreme Court Justice had on-going

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[1] The State Bar changed its former rule 462 concerning procedure for relief from its claimed "costs" to a new rule which went into effect January 1, 1995, rule 282, which now bars relief from paying its salaries and benefits. The new rule states... "this rule does not authorize a challenge to the State Bar's determination of "reasonable costs" under Business and Professions Code section 6086.10(b)(3)..." No challenge is now permitted, such that the State Bar voided the consideration for the Petitioner's consent to the stipulation *ex parte* and unilaterally after the fact.

litigation with an insurance company, which was not a party to the judgment, the judgment involved application of a new issue concerning bad faith insurance practices, which "had the clear and immediate effect of enhancing both the legal status and the settlement value of his own case." This compelled the United States Supreme Court to void the judgment and order of the State Supreme Court. **Aetna, supra**, p. 824. When a judge sat as a one-man Grand jury and then sat on whether he would enforce his orders by way of contempt, he was disqualified as a partisan on his own issues. He wore two hats at the same time- one partisan and one adjudicative. **In re: Murchison, supra.** This Court created a State Bar Court with a private party. It did so by appointing its judges. It occupies an executive role for a party. It appoints, reappoints, removes, and oversees its appointee Judges to a party's claimed Court. Now the issue is whether this claimed Court is non-existent as an unconstitutional court, and whether non-disclosure to the Petitioner that this claimed Court is not a Court, but a private group of employees of a prosecuting party is presented as to whether such non-

disclosure warrants, among other factors, withdrawal of the Petitioner's consent to a stipulation entered by it and non-approval of a recommended order premised exclusively on such consent and non-disclosure. Since this Court is, similar to the Board in **Gibson v. Berryhill** 411 U.S. 564, 579, 93 S. Ct. 1689, 36 L. Ed. 2d. 488 (1973), one of the Commissioners on a Board in **Yamaha Motor Corp., U.S.A. v. Riney** 21 F.3d 793 (Eighth Cir. 1994), and the entire Commission in **United Church Etc. v. Medical Center Com'n** 689 F. 2d. 693 (Seventh Cir. 1982), a partisan about the issue of a State Bar Court and the underlying issues of the Petitioner's petition, it is disqualified to hear or entertain the Petitioner's cause.

CONCLUSION

Since this court has had an opportunity to recuse itself in this situation for over five years, and has summarily denied all petitions of accuseds and, on information and belief, has refused to rule on about five hundred recusal motions [2] raising these

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2

On information and belief, this Petitioner is informed that the following attorneys have requested recusal of this Court

identical issues presented by accuseds, since the Petitioner's case does not involve approving guilt, but this Court's duty to forbear signing a recommended stipulated order when consent was withdrawn as soon as the Petitioner had notice of the first irregularity in the State Bar's representations and it is admitted by the State Bar that the Petitioner's consent to the stipulation was obtained through its admitted fraud and/ or non-disclosure, Petitioner requests that this Court issue a ruling on its recusal first so as to permit the Petitioner access to the federal court to hear and determine whether this Court should be permitted to review whether it may sign a proposed order concerning its interests in the prosecuting party or whether by reason of conflict of interest,

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on the identical grounds, and this Court has summarily denied each Petition: Lebbos, supra. Attorneys Barry Ammon, Harold Rauch, John Rakus, Robert Philip McNamee, Ronald Berki, Raymond Dunn, Gary Coutin, John B. Gunn, G.G. Baumen, Kevin G. Gupton, Lucille Boston, Richard Travis, Stuart Hirsh, Harold Perry, Howard Johnson, Lawrence Bragg, Edmundo Espinoza. California Supreme Court, docket nos. S016222 (1990), S020774, S022888 (1991), S035214 (1993), S037448 (1993), S041593 (1994), S04178 (1994), docket no. S042461(1994), docket no. S042379 (1994), S042968 (1994), S044825 (1995), S043884 (1995).

this Court is foreclosed from such consideration and must forbear from signing such a proposed order for its appointee to the prosecuting party.

RESPECTFULLY SUBMITTED,

Dated: February 24 ,1995

JESSIE SHIOW-JIUAN HO
Petitioner Attorney *Pro Se*

Verification

I have read the foregoing Points and Authorities in support of Motion for Recusal of members of the California Supreme Court and state it is made on my own personal knowledge, information, and belief, and this verification is executed this 24th day of February at San Jose, California.

JESSIE SHIOW-JIUAN HO
Petitioner Attorney *Pro Se*

SUPREME COURT
FILED
JAN 26 1995
Robert Wandruff
Clerk Deputy

THE SUPREME COURT OF THE STATE OF CALIFORNIA

	) Docket No. S44354
In the Matter of	) State Bar Court Case No. 93-0-14171
JESSIE SHIOW-JIUAN HO	) **Verified Petition For Review and Application for a Stay**
	) Ca. Rules of Court, Rule 952(d)
No. 142844 A Member of the State Bar	)

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1-408-279-1093

Respondent Attorney *Pro Se*

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THE SUPREME COURT OF THE STATE OF CALIFORNIA

	)	Docket No. S44354
	)	
In the Matter of	)	State Bar Court Case No.
	)	93-0-14171
	)	
JESSIE SHIOW-JIUAN HO	)	**Verified Petition for**
	)	**Review and Application**
	)	**For a Stay**
	)	
	)	Ca. Rules of Court, Rule
	)	952(c)
	)	
No. 142844	)	
A Member of the State Bar	)	
	)	

The Petitioner, JESSIE SHIOW-JIUAN HO, an attorney at law, petitions for review of an order approving stipulation of the parties signed by State Bar Court Judge Jennifer Gee, an appointee of the members of this Court. Said stipulation was entered into before a Notice to Show Cause issued. Petitioner withdrew her consent to the stipulation by sending a letter to the Honorable Jennifer Gee and this Court on December 8, 1994 and

again by certified mail, return receipt sent on December 12, 1994, containing the Petitioner's withdrawal of her consent to said stipulation. The return receipts indicate that this Court received the Petitioner's withdrawal of consent to the stipulation on December 13, 1994 and the Honorable Jennifer Gee received the withdrawal of consent to the stipulation on December 14, 1994. Exhibit A-1 through A-4. The Petitioner did not hear anything further and assumed her withdrawal of consent to the stipulation had been acted upon.

Notwithstanding the withdrawal of consent and acknowledged receipt of the same December 14, 1994, the State Bar on January 11, 1995 sent a transmittal to the California Supreme Court requesting it approve its proposed order and award it monies from the Petitioner in the amount of $1,517.70 as "costs", but it did not send to the Petitioner any order approving stipulation. Exhibit B. The Transmittal of State Bar Court Recommendation sent to the Petitioner by mail on January 11, 1995 contained solely the two page Transmittal of Recommendation, Exhibits B-1 and B-2; Proposed Order on

California Supreme Court caption approving stipulation which was unsigned, Exhibit B-3; Declaration of Service of Transmittal of Recommendation dated November 16, 1994 and Proposed Order, Exhibit B-4; Certificate of [State Bar] Costs of $1,517.70 filed January 11, 1995, Exhibit B-5; Certificate of Costs of $1,044.70 Submitted by the Office of Investigation and the Office of Trials of the State Bar of California, Exhibit B-6; Statement of Costs of $473.00 of Office of the State Bar Court of the State Bar of California, Exhibit B-7, and Declaration of Service of Certificate of Costs and Accompanying Costs filed on January 11, 1995, Exhibit B-8. There was no order. Exhibit B-1 through Exhibit B-8.

This Petition for Review is to request the proposed order not be approved, inasmuch as a party thereto, the Petitioner, withdrew her consent to the stipulation a month before the State Bar's transmittal to this Court. Said withdrawal of consent is based on the undisclosed conflicts of interest, including financial interest, within the signatory judge Gee and her co-employee prosecutors and investigators, whereby the Petitioner, in entering

into the stipulation, could not have provided and did not provide an informed consent. Parties are induced to enter into stipulated guilty pleas without disclosure of the role of the judge as an employee of a prosecuting party, whose appointment and position is dependent on finding accuseds guilty so as to make monies for his or her private prosecuting party employer, with said stipulations never disclosing the amount of monies required to pay the judge and his co-employees demanded by them of the accused. The accused never learns the truth until after he or she has signed an approved stipulation and later is advised the judge signing it demands the accused pay him $473.00 for signing it, with another $1,300 plus demanded by the prosecutor and co-employee investigator to be paid to them for their salaries and benefits as well, non-payment of which results in a taking of the accused's license to practice law by these co-employees desiring to be paid by the accused. Until January 16, 1995, when the Petitioner received the January 11, 1995 transmittal, she had no idea that "costs" were not "costs," but were and are the salaries and benefits of the judge and his co-employees. This was never

disclosed prior to or at the time of entering the stipulation. The chart of the 3,091 disbarments and suspensions and fourteen million dollar financial interest of the State Bar and its State Bar Court in procuring stipulated guilty dispositions is attached as Exhibit C, which information was never disclosed to the Petitioner.

Inasmuch as the stipulation provides that, "The Supreme Court must enter an order effectuating the terms and conditions of this stipulation before any stipulation, actual or stayed, will be effective," Stip, p. 4, Effect of this Stipulation, item 4, and Petitioner has withdrawn her consent to said stipulation prior to this Court's approval, Petitioner respectfully requests that this Court forebear from approving and signing the State Bar's proposed order.

A. Necessity of State Court Appellate Ruling

Pursuant to Article 3, section 3.5 of the California Constitution, the State Bar Court of the State Bar of California admits it is constitutionally prohibited from deciding the constitutional issues presented. As stated by it *In the Matter of*

Res B (Review Dept. 1991), 1 Cal. State Bar Reporter 424, "As a *sui generis* arm of the Supreme Court, the State Bar Court may recommend the Supreme Court declare a statute unconstitutional, but may only interpret existing law."

B. Important Questions of Constitutional Law

This Petition is filed pursuant to California Rules of Court, Rule 952(d) concerning review of decisions of the State Bar Court. This Petition is filed as the legal questions concern 1) whether an order of an employee of a prosecuting party based on a stipulated disposition between the parties must not be approved by a constitutional court based on the withdrawal of consent by a party prior to approval, and 2) whether such withholding of approval is required by reason of the lack of an informed consent by a party to the stipulation arising from lack of disclosure of a number of conflicts of interest of the judge and prosecutor approving the stipulation, including the nature and extent of her financial interest for her employer in securing it and the judge's status as an employee of the prosecuting party, and 3) whether the lack of disclosure of the $1,517.70 demanded to be

paid in the stipulation or State Bar Court order approving stipulation prevents an entry of an order for said sum later disclosed and voids the stipulation and State Bar Court order approving it.

As the fiduciary in charge of its appointees to the prosecuting party, this Court has a duality of role which renders it difficult for it to sit impartially concerning non-approval of the stipulation and granting relief to the Petitioner. Ca. Rules of Court, Rule 961. The funds obtained from the Petitioner of initially the $1,517.70 demanded in the transmittal of November 16, 1994, Exhibits B-5, B-6, B-7, are available to be used by the prosecuting party to pay the salaries and benefits of this Court's appointees to the prosecuting party, including its appointee Judge Gee. Further monies would be available by it permitting its appointees to find a revocation of probation and imposing additional monies to reimburse the salaries and benefits of its private appointees and to fund their law clerks, offices, research assistants, medical, dental, and retirement plans since administrative costs to recoup reasonable expenses of

investigation, hearing, and review are assessed and collected for this Court's appointees private employer for each additional proceeding. Ca. Business and Professions Code section 6086.10(b). Therefore, an important issue of law is whether, as a partisan for the prosecuting party and its State Bar Court, this Court is required to disqualify itself from passing on this Petition and, pursuant to Article 6, section 12 of the California Constitution, assign it for hearing to a State Court of Appeals.

1. A Partisan State Supreme Court and Request for Assignment to State Court of Appeals

The issue presented is whether the California Supreme Court is and has been a partisan since January 1, 1989 for the prosecuting party, the State Bar of California, arising from its assumption of an executive role of appointing some of its employees, overseeing them, removing them, assisting the prosecuting party in creating its State Bar Court, and awarding them monies by finding guilt of accuseds, while simultaneously occupying an adjudicative role concerning the State Bar of California in finding guilt of accuseds. Since this issue involves the extrajudicial and personal roles assumed by the members of

this Court for a party appearing before them, and their possible personal liabilities to those harmed thereby, the Petitioner respectfully requests this Court recuse itself from deciding to review or reviewing the merits of this Petition and pursuant to the recusal criteria for State Supreme Court Justices established by the United States Supreme Court in Aetna Life Insurance Company v. LaVoie 475 U.S. 813, 89 L. Ed. 823, 106 S. Ct. 1580 (1986), and pursuant to Article 6, section 12 of the California Constitution and Mosk v. Superior Court of Sacramento County 159 Cal. Rptr. 494, 601 P. 3d. 1030, 25 C.3d. 474 (1979), assign this Petition to a State Court of Appeals.

2. Petitioner's Withdrawal of Consent prior to Approval by the State Supreme Court voids the recommended order

The Stipulation entered into between the Petitioner and the State Bar was entered into prior to the issuance of a Notice to Show Cause. Petitioner could not have known of the defects in the State Bar Court system to which she was submitting herself by entering into such a stipulation with its employees as the

principals within the State Bar failed to disclose the relevant facts to the Petitioner. The Stipulation face sheet states it is being submitted to The State Bar Court of the State Bar of California. Stip, Pg.1. It states it is being submitted for approval to the California Supreme Court following its approval by the State Bar Court, and that "The Supreme Court must enter an order effectuating the terms and conditions of this stipulation before any stipulation, actual or stayed, will be effective." Stip, p. 4, Effect of this Stipulation, item 4. These terms lead the signatory party to believe the State Bar Court is part of the constitutional courts within the State, since its transmits its proposed orders directly to the California Supreme Court for its approval, and no order is effective until approved by the California Supreme Court.

There is no disclosure that the State Bar Court is not a "Court." Article 6, sections 1, 9, Ca. Constitution. There is no disclosure that it is not publicly funded. California Business and Professions Code section 6140 et. seq. There is no disclosure that the State Bar Court is operated from funds, *inter alia*, obtained by finding accuseds guilty. California Business and

Professions Code section 6086.10. There is no disclosure the State Bar Court is a private entity created and run by the prosecuting party, the State Bar of California. There is no disclosure that the State Bar Court, while it calls itself a "Court," does not conform to the rules of evidence or of procedure applicable to the constitutional courts as its principal and owner, the State Bar, has exempted itself from State law under Ca. Business and Professions Code section 6001. There is no disclosure that the State Bar Court judges within this entity are the private co-employees of the prosecutors and their investigators. Ca. Business and Professions Code sections 6079.1, 6079.5, 6086.65. There is no disclosure that the one year of stayed suspension and of probation is supervised and determined, as well as its revocation by an employee of the prosecuting party who obtains money for his private employer by finding cause to revoke the probation of the signatory accused. Ca. Business and Professions Code sections 6079.1, 6079.5, 6086.5, 6086.65, 6086.10. There is no disclosure that the forty five day actual suspension provided for shall not and never ceases

until the Petitioner pays the judge, her co-employee prosecutor and investigators undisclosed monies they will be awarding themselves later, thus amounting to a de facto disbarment for non-payment of salaries and benefits of the judge and his co-employees within the prosecuting party. Stip., pg. 21, cond. 110. Ca. Business and Professions Code section 6086.10(a).

In a valid plea bargained disposition, all relevant facts and consequences are required to be disclosed prior to its entry by the prosecutor and approval by a constitutional court. An accused must have "full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." Moran v. Burbine 475 U.S. 412, 421 106 S. Ct. 1135, 1141, 89 L. Ed.2d. 410 (1986). This must also apply to the State Bar Court system, as it also is a rule applicable to civil proceedings. The Stipulation states, "In order to accomplish the objectives of this stipulation, the parties waive all State Bar Court procedures regarding formal discovery as well as hearing or trial." Stip, pg. 4, D. It then states, "the agreed disposition is eligible for costs to be awarded to the State Bar. (Bus. & Prof. Code s. 6086.10

and 6140.7). Petitioner has been notified of his or her duty to pay costs. The amount of costs assessed by the Office of Trial Counsel will be disclosed in a separate cost certificate submitted following approval of this stipulation by a hearing judge [of the State Bar Court]. The amount of costs assessed by the State Bar Court will be disclosed in a separate cost certificate submitted upon finalization of this matter." Stip, Pg.4, item H1. The stipulation contains no disclosure of the amount of money required to be paid. It contains no disclosure that "costs" are not statutory costs, but the salaries and benefits of the State Bar employee investigators, prosecutors, and co-employee judges within its State Bar Court. It contains no disclosure of when the monies are to be paid. It contains no disclosure of any conditions to be attached to said payments of unidentified monies. The stipulation further states,"Waiver of Right to Petition for relief from Assessed Costs," Stip, Pg. 7, that "Respondent acknowledges that this Stipulation is a compromise of disputed allegations and that a petition for relief from costs pursuant to Transitional Rules of Procedure, rule 462, alleging special

circumstances or other good cause shall not be based upon the timing of this Stipulation, any aspects of the negotiation process in this case, nor the degree of discipline agreed upon by the parties hereto." It further states that, "That within one (1) year from the date on which the disciplinary order in this matter becomes effective, Respondent shall attend the State Bar Ethics School, which is held periodically at the State Bar of California... and shall take and pass the test given at the end of such session." Stip, p. 34, Attachment to Stipulation. There is no disclosure there is a fee required for said school. There is no disclosure that the fee is $100.00, and that the sums to be paid for it are paid to the prosecuting party, or that the examination given at the end of it is prepared, graded, and approved solely by the prosecuting party.

The stipulation further provides that,"It is further recommended that the California Supreme Court order Respondent to take and pass the California Professional Responsibility Examination administered by the Committee of Bar Examiners of the State Bar of California within one year of

the effective date of the order of the Supreme Court..." Stip., p.23, Further Recommendations. There is no disclosure that this examination is prepared, written, and graded by the prosecuting party. There is no disclosure the costs of said examination is $250.00. There is no disclosure those funds go to the prosecuting party. There is no disclosure the examination is a trick examination of a subjective nature requiring not a correct answer, but the "best" answer. There is no disclosure that there is a less than a thirty percent pass rate for said examination, and that each time it is required to be taken costs the attorney an additional $350.00 payable to the prosecuting party, and that failing this examination is grounds for revocation of probation and imposition of a one year actual suspension. There is no disclosure that the one year actual suspension may be imposed *ex parte*, without notice or hearing afforded to the Petitioner. Ca. Rules of Court, Rule 951(b). There is no disclosure that such an *ex parte* one year actual suspension may be imposed by an employee of the prosecuting party, sitting as a Judge in the State Bar Court, wherein she or he awards herself or himself, his co-

employee prosecutor and investigator additional monies for their salaries and benefits by revoking the stay and imposing an actual suspension. Ca. Business and Professions Code section 6086.10.

Until a few days after January 11, 1995, after the stipulation was signed and approved by the State Bar Court prior thereto, the Petitioner was never advised the State Bar Court judge was demanding she be paid $473.00 by the Petitioner for affixing her signature to the stipulation, or that the prosecutor was demanding that he be paid $309.00 by the Petitioner for handwriting inserts into a form stipulation and signing it, and that their mutual co-employee investigator was demanding $387.00 from the Petitioner for investigating this case so as to ensure a guilty recommendation issue, when no guilt could reasonably be found on the facts, and that unless the Petitioner paid these private co-employees for their salaries and benefits of a total of $1,517.00, which includes an unidentified claim of $348.70 in" other taxable costs," Exhibit B-1, she would be *ex parte* suspended for one year by one of them or that her forty five day actual suspension would never cease unless she paid them in full

the monies demanded by them. Exhibit B-5, B-6, B-7. It is in light of these non-disclosures of relevant conflicts of interest and financial interest of the principals, the Petitioner withdrew her consent to the stipulation on December 8, 1994. Exhibit A-1. Since the basis of the recommendation is a stipulation, to which consent was revoked by the signatory after learning the true facts after it was executed, this Court should not approve the recommendation, since the Petitioner withdrew consent to the stipulation prior to its approval by this Court. McDowell v. Orsini (1976) 54 Cal. App.3d. 951, 960, 127 Cal. Rptr. 285, Johnson v. Superior Court 121 Cal.3d. 115, 116, 175 C.R. 272, People v. Hill (1974) 12 C. 3d. 731, 767, 117 C.R. 393, 528 P.2d.1.

3. By Reason of the Lack of Informed Consent, the Stipulated Plea Should be Voided

There is no clause in the stipulation concerning the waiver of a constitutional right to a judicial proceeding or a disinterested judge or prosecutor. The United States Supreme Court has stated a guilty plea is more serious than a confession because it is tantamount to a conviction. Kercheval v. United States 274

U.S. 220,223, 47 S. Ct. 582, 583, 71 L. Ed. 1009 (1927). The United States Supreme Court has required that a guilty plea, like any surrender of fundamental constitutional rights, reflect the unfettered choice of the defendant. Boykin v. Alabama 395 U.S. 238, 242-244, 89 S. Ct. 1709, 1711-1713, 23 L. Ed.2d. 274 (1969). Courts have inquired as to whether the plea was made voluntarily, knowingly, and intelligently with full understanding and appreciation of the consequences. Machibroda v. United States 368 U.S. 487, 493, 182 S. Ct. 510, 513, 7 L. Ed.2d.. 473 (1962). The Courts must indulge in every reasonable presumption against waiver of constitutional rights. Evans v. Raines 800 F. 2d. 884, 885 (Ninth Cir. 1986). Voluntariness, knowledge, and intelligent waiver means the capacity for reasoned choice among the alternatives available. Moran v. Godinez 972 F. 2d. 263 (Ninth Cir. 1992), at p. 266. "... The relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must be made with full awareness of both the nature of the right

being abandoned and the consequences of the decision to abandon it." Moran v. Burbine 475 U.S. 412, 421 106 S. Ct. 1135, 1141, 89 L. Ed.2d. 410 (1986).

The totality of the circumstances is examined to determine if a knowing and intelligent relinquishment of rights has occurred. Johnson v. Zerbst 304 U.S.458,464, 58 S. Ct.1019, 1023, 82 L.E d. 1461 (1938). The standard of voluntariness of guilty pleas was adopted by the United States Supreme Court in Brady v. United States 397 U.S. 742, 753, 90 S. Ct. 1463, 1472, 25 L. Ed. 747 (1970) from Judge Tuttle of the Fifth Circuit, as follows:

> "A plea of guilty entered by one fully aware of the direct consequences, including the actual value of any commitments made to him by the court, prosecutor, or his own counsel, must stand unless induced by threats (or promises to discontinue improper harassment), misrepresentation (including unfulfilled or unfulfillable promises), or perhaps by promises that are by their nature improper as having no proper relationship to the prosecutor's business (e.g. bribes). 242 F. 2d. at page 115"

Misrepresentation or other impermissible conduct by state agents voids a guilty plea. Von Moltke v. Gillies 332 U.S. 708, 68 S. Ct. 316, 92 L. Ed. 309 (1948). The term "misrepresentation" means, "a false impression or account, the act

of misrepresenting which is defined as "to give a false impression or account of, either deliberately or unintentionally." The New Lexicon Webster's Dictionary of the English Language, "misrepresentation" at p. 639. The State Bar and its co-employee State Bar Court Judge Gee concede they concealed that they are co-employees, that they have a financial interest for their private employer in securing the stipulation without disclosure of their relationship as co-employees and of the monies payable to their mutual employer, and that they are permitted to *ex parte* revoke probation and impose a one year actual suspension, while being partisans and financially interested therein.

Since the misrepresentations or omissions of material facts strike at the core of the stipulation as the Petitioner would not have entered into it had she known the" conditions" required large money payments to the State Bar, the large money payments had to be paid off within the forty five day actual suspension period or else the Petitioner was *de facto* disbarred for non-payment of those sums without notice or hearing. The

Petitioner would not have entered into a stipulation had she known that the judge enforcing the stipulation and its conditions is the prosecutor's co-employee and financially interested in revoking the stayed suspension and imposing money awards for herself and her co-employee prosecutors, investigators, and judges, and his employer, and had the Petitioner been advised she would have no access to a neutral court of law by reason of the partisan role of the State Bar Court judges and the State Supreme Court for the prosecuting party. If an accused were told if he signs a paper for a guilty plea that he will not be permitted to have a neutral or a constitutional court of law review whether more punishment should be imposed for violation of its "conditions," and he will have to continue paying off the judge's private employer indefinitely and his co-employee prosecutors and investigators, no accused in his right mind would sign such a paper.

Since the waiver of constitutional rights was not knowing, intelligent, voluntary, but was based on the misrepresentation and omission of material facts by each layer involved, the stipulation

must be voided as being the product of an uninformed consent. In all events, entry of the order approving stipulation must be voided for lack of disclosure by Judge Gee of her relationship to the financial beneficiary of her order and the amount of financial interest therein under the reasoning of the United States Supreme Court in Liljeberg v. Health Services Acquisition Corp. (1988) 486 U.S. 847, 108 S. Ct. 2194, 100 L. Ed. 2d. 855.

4. The Court may not Enter an Award of Costs When There was no Prior Service on the Petitioner

The Stipulation which was approved by the State Bar Court judge by order approving stipulation did not contain a memorandum of costs. The Memorandum of Costs was not served until after January 11, 1995. Exhibit B-5 through B-8. An order may not issue for costs when there was no service of a cost memorandum. Riddell v. Harrell (1886) 71 Cal. 254, 261; Coast Electric Service, Inc. v. Jensen (1931) 111 Cal. App. 124, 388-389, c.f. Bell v. Superior Court (1906) 150 Cal. 31, 35-37. Since it was a substantial material omission of a known fact, the stipulation must be voided in its entirety for lack of consideration

and of disclosure. An order obtained without notice may be attacked at any time. Thompson v. Cook (1942) 20 Cal. 2d. 564, Nagel v. P & M Distributors Inc. (1969) 273 Cal. App. 2d. 176, 179-182, Sniadach v. Family Finance Corp. 395 U.S. 337 (1969), and Fuentes v. Shevin 407 U.S. 67 (1972).

Petitioner incorporates by reference, as if set forth herein in full, the attached Declaration of Counsel concerning the unavailability of a transcript due to no hearing having been conducted within the State Bar Court. Ca. Rules of Court, Rule 952(e)(3).

Conclusion

By reason of the importance of determining whether a party's consent to a stipulation may, for any cause, be withdrawn prior to approval by a constitutional court; whether the Petitioner's consent must be permitted to be withdrawn since it was an uninformed consent, so that this Court would be acting unconstitutionally in approving a stipulation based on an uninformed consent; and whether, by reason of the lack of service of the Memorandum of Costs with the stipulation and order, this

Court is without jurisdiction to award costs to the State Bar or approve the proposed order, Petitioner respectfully requests this Petition be referred to a Court of Appeals' panel to hear and determine these significant constitutional issues and that a Stay of proceedings within the State Bar Court and this Court issue until it has heard and determined the cause, and that this Honorable Court, in the interim, forebear from approving the proposed order.

I declare under penalty of perjury the above Petition is based on my own personal knowledge, information, and/or belief, and this verification is executed this 25th day of January, 1995 at San Jose, California.

RESPECTFULLY SUBMITTED,

JESSIE SHIOW-JIUAN HO
Petitioner Attorney *Pro Se*

JESSIE SHIOW-JIUN HO
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1-408-279-1093

Petitioner Attorney *Pro Se*

THE SUPREME COURT OF THE STATE OF CALIFORNIA

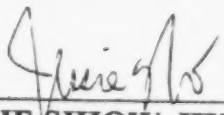
In the Matter of	Docket No. S44354
	State Bar Court Case No. 93-0-14171
JESSIE SHIOW-JIUAN HO	**Declaration of Counsel re: Unavailability of Transcript**
	Ca. Rules of Court, Rule 952(d)
No. 142844 A Member of the State Bar	

No hearing was conducted within the State Bar Court at any time. No Notice to Show Cause had issued. There was no hearing concerning whether the plea or waiver of rights was voluntary, intelligent, or informed prior to approval of the stipulated plea. As a result of the foregoing, there is no transcript

of a hearing.

I declare under penalty of perjury the above Declaration of Counsel is based on my own personal knowledge, information, and belief, and this verification is executed this 25th day of January, 1995 at San Jose, California

RESPECTFULLY SUBMITTED,



JESSIE SHIOW-JIUAN HO
Petitioner Attorney *Pro Se*